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## BOMBAY ACT No. V OF 1878. [a]

*(The assent of the Governor General of India to this Act was first published by the Governor of Bombay on the 19th September, 1878.)*

## An Act to consolidate and amend the Ábkárí-law of the Presidency of Bombay.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of liquor and of intoxicating drugs in the Presidency of Bombay; It is enacted as follows :—

### I.—PRELIMINARY.

Short title.

**1.** This Act may be cited as the Bombay Ábkárí Act, 1878.

Extent.

It extends to the whole of the Presidency of Bombay;

Commencement.

and it shall come into force in any portion of the said Presidency on such date [b] as Government, by notification in the Bombay Government Gazette, directs.

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[a] Bom. Act III of 1892 (as to mhowra flowers) is to be construed as part of Bom. Act V of 1878—see s. 1 of the Act of 1892, printed in Vol. III of this Code.

It is provided by s. 6 of the Act of 1892 that nothing in that Act shall be deemed to affect the operation of any law for the time being in force, or of any rule for the time being having the force of law, relating to mhowra flowers as an article of forest-produce.

[b] Bom. Act V of 1878 came into force in the whole of the Presidency of Bombay on the 1st January, 1879—see Notification No. 5756, dated 8th November, 1878, in Bombay Government Gazette, 1878, Part I, p. 708.

2. [*Repeal of enactments.*] *Repealed by Act XVI of 1895.*

3. In this Act, unless there be something repugnant in the subject or context:— Interpretation-clause.

(1) "Ábkárí-revenue" means revenue derived or derivable from any duty, fee, tax, fine or confiscation imposed or ordered, under the provisions of this Act, or of any other law for the time being in force relating to liquor or intoxicating drugs:

(2) "Ábkárí-officer" means a Commissioner, Collector or any officer or other person lawfully appointed, or invested with powers under section 6:

(3) "Commissioner" [a] includes an officer appointed by Government to be a Commissioner for the purposes of this Act: [a]

(4) "Collector" [a] includes [a] any person appointed under section 5 to exercise the powers and perform the duties of a Collector under this Act:

(5) "Magistrate" means, in the City of Bombay, a Presidency Magistrate, and elsewhere, a Magistrate of the first or second class:

(6) "toddy" means juice drawn from a cocoanut, brab, date or any kind of palm-tree, whether in its fermented or unfermented state:

(7) "liquor" includes spirits of wine, spirits, wine, toddy, beer and all liquid consisting of, or containing, alcohol:

(8) "country-liquor" includes all liquor produced or manufactured in India:

(9) "intoxicating drug" includes gánjá, bháng and every preparation and admixture of the same, and every intoxicating drink or substance prepared from hemp, grain or other material not included in the term "liquor;" but does not include opium or any thing included within the meaning of that word as defined in the [b] Opium Act, 1878: [c] I of 1878.

(10) "import" and "export" include respectively the conveying into, or out of, any part of the Presidency of Bombay, from, or to, any other part of India:

(11) "manufacture" includes every process, whether natural or artificial, by which any spirituous, fermented or intoxicating liquor or intoxicating drug is prepared, and also every process for the rectification of liquor:

admixing is a process within the meaning of this definition;

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[a-a] These words were substituted for the original words by Bom. Act III of 1886.

[b] The word repealed by Act XVI of 1895 is omitted.

[c] For Act I of 1878 see the revised edition, as modified up to 1st July, 1894, published by the Legislative Department.

(12) "ser" means a weight of eighty tolas.

[a] (13) "Mhowra flower" does not include the berry or seed of the mhowra tree.

## II.—Establishment and Control.

Collectors charged with carrying out Act.

**4.** Subject to the control and direction of the Commissioners and the orders of Government, the Collectors are charged with the collection of the ábkári-revenue, and with the carrying out of the provisions of this Act.

For the purposes of this Act, the Collector of Bombay shall be subordinate to such Commissioner as Government directs.

Special Collectors of Ábkári-revenue may be appointed.

**5.** Government may, by notification in the Bombay Government Gazette, appoint any person other than the Collector of Land-revenue to exercise, in any district or place, all the powers and perform all the duties conferred and imposed by this Act on a Collector, subject to such control, if any, in addition to that of the Commissioner and of Government, as Government may from time to time direct.

Subordinate officers.

**6.** To aid the Collectors in carrying out the provisions of this Act, the Commissioners may, subject to such orders as may from time to time be passed by Government in this behalf, appoint such subordinate officers, with such designations, and assign to them respectively such powers and duties under this Act, as they deem fit.

Government, or, subject to such orders as aforesaid, the Commissioners, may invest any Government-officer in any department, either personally or in right of his office, or any other person, with such powers, and impose upon him such duties, under this Act as they deem fit, and any such officer shall thereupon exercise the said powers and discharge the said duties in addition to the powers and duties incident to his principal office :

Provided that powers under sections 36 and 40, clause (*b*), shall in no case be conferred on any officer of any department who is not superior in rank to a peon or constable, and that any assignment of, or investment with powers or duties made under this section may at any time be cancelled or varied by the authority which made it.

Punishment of subordinate officers for misconduct.

**7.** Subject to such orders as aforesaid, the Commissioners may at any time after inquiry recorded in writing fine, dismiss, suspend or reduce any subordinate officer appointed, or any officer on whom any additional powers or duties have been conferred or imposed by them under the provisions of the last preceding section, for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct.

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[a] Cl. (13) was added by Bom. Act III of 1892, s. 1A.

Delegation of powers by Commissioners to Collectors.

**8.** The powers conferred on the Commissioners by the last two sections may be delegated by them, in whole or in part, to the Collectors, or to any Collector subordinate to them, and any such delegation may be at any time cancelled by the Commissioners.

### III.—Import, Export and Transport.

Import of liquor or intoxicating drug.

**9.** No liquor or intoxicating drug shall be imported by land or by sea into any part of the Presidency of Bombay unless—

VIII of 1894. (*a*) it is liable to the payment of duty under the Indian Tariff Act, 1894,[a] or any other law for the time being in force relating to the duties of customs on goods imported into British India, and the duty prescribed by such law has been paid thereon; or

(*b*) such import is permitted under the power next hereinafter conferred.

Subject to the orders of Government the Collector may, from time to time,—

(*c*) permit the import of liquor or intoxicating drugs or of any kind of liquor or intoxicating drugs other than liquor or intoxicating drugs liable to the payment of duty under such law as aforesaid, on payment of the duty, if any, to which the same is liable under this Act and on such other terms as he thinks fit, and

(*d*) cancel such permission.

Export of liquor or intoxicating drug.

**10.** No liquor or intoxicating drug shall be exported by land or by sea from any part of the Presidency of Bombay unless—

(*a*) it has been lawfully imported by sea into any port in the said Presidency, and its export is permitted by competent authority on payment of the fee or duty, if any, to which it is liable under any law for the time being in force on its transhipment or re-exportation; or

(*b*) such export is permitted under the power next hereinafter conferred.

Subject to the orders of Government the Collector may, from time to time,—

(*c*) permit the export of liquor or intoxicating drugs, or of any kind of liquor or intoxicating drugs, on payment of the duty, if any, to which the same is liable under this Act and on such other terms as he thinks fit, and

(*d*) cancel such permission.

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[a] The reference to Act XVI of 1875 is altered in accordance with Act VIII of 1894, s. 2 (3). (For Act VIII of 1894 see the revised edition, as modified up to 28th December, 1894 published by the Legislative Department.)

Sections 9 and 10 not to affect certain laws and powers of Governor General in Council.

**11.** Provided that nothing in the two last preceding sections shall be deemed to affect any law for the time being in force which prohibits or restricts the importation of any liquor or intoxicating drug into the said Presidency, or which empowers the Governor General in Council to prohibit or restrict such importation, or which empowers the Governor General in Council to exempt any liquor or intoxicating drug from the whole or any part of the duties of customs to which it is liable under any law for the time being in force:

Provided further that it shall be lawful for the Governor General in Council or for the Governor of Bombay in Council to exempt any liquor or intoxicating drug from any duty to which the same may be liable under either of the said sections, or under any of the other provisions of this Act.

Transport of liquor and intoxicating drugs.

**12.** No liquor or intoxicating drug exceeding such quantity as Government may from time to time deem fit to prescribe by notification in the Bombay Government Gazette either generally for the whole Presidency, or for any local area, district, city, town or village, shall be transported or removed from any one place to any other place unless—

(*a*) in the case of liquor other than country-liquor, the quantity transported or removed is *bonâ fide* required for private consumption, or for sale at any place to which the same is being transported or removed, and at which the sale of such liquor is duly licensed or permitted under the provisions of this Act, or

(*b*) under a permit issued by an Ábkárí-officer duly empowered in this behalf under the provisions of the next following section.

Permits for transport.

**13.** Permits for the transport or removal of liquor or intoxicating drugs may be issued by the Collector or by any other Ábkárí-officer duly empowered in this behalf.

Such permits may be issued either generally for definite periods, or for specified occasions only.

Every such permit shall specify—

(*a*) the name of the person authorized to transport or remove liquor or intoxicating drugs;

(*b*) the period for which the permit is to be in force;

(*c*) the quantity and description of liquor or intoxicating drugs for which it is granted; and

(*d*) the places from and to which the liquor or intoxicating drugs are to be transported or removed, and, in the case of places more than ten miles apart, the route by which they are to be conveyed.

## IV.—Manufacture.

Manufacture of liquor or intoxicating drug prohibited except under provisions of Act.

**14.** No liquor or intoxicating drug shall be manufactured,
no toddy shall be drawn from any tree,
no distillery or brewery shall be constructed or worked, and
no person shall use, keep or have in his possession any material, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing liquor or any intoxicating drug,

except under the authority and subject to the terms and conditions of a license to be granted by the Collector in this behalf or under the provisions of section 23.

Establishment of public distilleries.

**15.** The Collector may, with the previous sanction of Government,—

(*a*) establish at any place within his jurisdiction a public distillery in which liquor or any kind of liquor may be manufactured under a license granted under the last preceding section on such conditions as Government deems fit to impose, and

(*b*) discontinue any public distillery so established.

## V.—Sale. [a]

Sale of liquor and intoxicating drugs prohibited without license or pass.

**16.** Except as is hereinafter otherwise provided, no liquor and no intoxicating drug shall be sold without a license or pass from the Collector :

Provided that, in the City of Bombay and in such other places as Government may from time to time direct, no such license shall be necessary for the sale of any liquor not manufactured or produced in India, in its original casks or packages as imported, or in small quantities as *bonâ fide* samples :

Provided, further, that no such license shall be necessary for the sale, by a cultivator or owner of any plant from which an intoxicating drug is produced, of those portions of the plant from which the intoxicating drug is manufactured or produced, to a person holding a license under this section for the sale of intoxicating drugs, or to a person duly licensed under this Act to manufacture or to export intoxicating drugs.

Limit of retail-sale.

**17.** It shall be lawful for Government from time to time, by notification in the Bombay Government Gazette, to limit the quantity of country-liquor or of any intoxicating drug which may be sold by retail at one time, or to one and the same person, in the aggregate on any one day within any defined local area or place.

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[a] As to sale of spirituous liquors and intoxicating drugs in cantonments, see Act XIII of 1889, Ch. III.

When any such limit has been prescribed in any local area or place, the Collector or any Abkárí-officer duly empowered in this behalf may, subject to rules to be prescribed by the Commissioners under section 35, give special orders for the occasional sale of country-liquor or of any intoxicating drug in quantities exceeding such limit.

Sale of toddy.

**18.** No owner of any toddy-producing tree, and no person having a right to the juice of any such tree, and no drawer of toddy, shall sell toddy, and no person transporting or removing toddy under a permit granted under clause (*b*) of section 12, shall sell the same, except—

(*a*) under a license granted under section 16, or

(*b*) to a person licensed to manufacture or sell liquor under this Act:

Provided that Government may from time to time, by notification in the Bombay Government Gazette, suspend all the provisions relating to toddy contained in this Act with respect to any local area, and thereupon toddy may, during the period for which such notification continues in force, be drawn and sold without license or pass in such local area, notwithstanding anything in this Act.

[a] *VA.—Special provisions as to Mhowra Flowers.*

Special provisions as to Mhowra flowers.

[a] **18A.** (1) Save as is provided in sub-section (3), no person shall export from or import into any prescribed area or collect, transport, sell or have in his possession within any such area any quantity of mhowra flowers exceeding the prescribed limit in weight, except under the authority and subject to the terms and conditions of a license, permit or pass granted by the Collector or other officer duly empowered in this behalf.

(2) In this section 'prescribed area' means such area, comprising either the whole or some portion of the districts of Táná and Kolába as the Governor in Council from time to time notifies in this behalf; and 'prescribed limit' means four sers or such greater quantity as the Governor in Council from time to time notifies in this behalf:

(3) Provided that during the period of two months from the 16th February to the 15th April in each year or such longer period, embracing the said two months as the Governor in Council from time to time by notification in the Bombay Government Gazette directs, no license, permit or pass shall be necessary for the collection, transport, sale or possession anywhere within the limits of the táluqás of Kalyán, Bhiwndi, Karjat, Murbád, Sháhápur and Váda or within any other portion of a prescribed area which the Governor in Council thinks fit in a notification as aforesaid to specify, of any quantity of mhowra flowers which are the produce of that year and of the said táluqás or of any or of either of them or other portion of a prescribed area, if any, so specified.

[a] This heading and section were inserted by Bom. Act III of 1892, s. 2.

## VI.—Duties.

Duty on liquor.

**19.** A duty shall, if Government so direct, be levied on all liquor—

(*a*) permitted to be imported into any part of the Presidency of Bombay under the provision of section 9, clause (*c*), or

(*b*) permitted to be exported from any part of the Presidency of Bombay under the provision of section 10, clause (*c*), or

(*c*) manufactured under any license granted under section 14, or

(*d*) manufactured at any distillery established under section 15, or

(*e*) permitted under section 13 to be transported or removed from any one place to any other place,

at such rate or rates as Government may from time to time prescribe.

Rate.

The said duty may be imposed at a certain rate per imperial gallon of liquor of not more than a certain strength, to be augmented in proportion as the strength of the liquor exceeds such strength, or in a lump sum to be paid daily or monthly or at other specified periods, in consideration of the privilege granted, or in any other manner whatsoever that Government may deem fit to direct.

Duty on tapping of toddy trees.

**20.** For every toddy-producing tree from which toddy is drawn there shall, if Government so direct, be levied for any period during which such tree is tapped such duty as Government from time to time directs ;

and every license for drawing toddy granted under section 14 shall specify, in addition to any other particulars prescribed by Government under section 30,—

(*a*) the number, description and situation of the trees to be tapped ;

(*b*) the amount of duty to be levied in respect of each tree included in the license ;

(*c*) the instalments, if any, in which and the periods at which the said duty shall be leviable.

Duty by whom payable.

**21.** The said duty shall be leviable primarily from the person holding the license to draw toddy, and in default by him, or if the trees are tapped without license, from the owner of the trees.

Owner entitled to assistance in recovering from licensee duty paid by him.

**22.** When any duty is recovered under the last preceding section from the owner of the trees, he shall be entitled to assistance in recovering the same from the holder of the license under the provisions of the law for the time being in force relating to the recovery by superior landholders of their dues from their tenants.

Farming of right of drawing toddy within local area.

**23.** It shall be lawful for the Government within any local area to which they shall deem fit to apply the provisions of this section, instead of directing the levy of a duty under section 20 on each tree from which toddy is drawn, to farm the right of drawing toddy from all toddy-producing trees within such area for such period and on payment of such duty either in the lump or in periodical instalments and on such conditions as they shall deem fit to impose.

Within any such area no person shall draw toddy from any toddy-producing tree, except with the written permission of the person to whom the said right is farmed.

Levy of tax or fee on toddy trees prior to Act legalized.

**24.** The levy heretofore made in certain districts of a tax on the tapping of toddy trees, or of a license-fee for drawing toddy from such trees, shall be deemed to have been lawfully made, and may hereafter be continued, subject to the provisions of this Act, at the same rates and subject to the same rules as are now in force until such time as Government, in exercise of the powers conferred by this Act, otherwise directs.

Arrears of any such tax or fee which accrued before the passing of this Act shall be recoverable as a duty due under this Act.

Privilege of drawing toddy from Government trees.

**25.** The privilege of drawing toddy from trees the right to which vests in Government may be disposed of annually by auction or otherwise on such terms as the Collector, acting under the general orders of Government, deems fit.

Adjustment of duty when joint privileges are conceded.

**26.** Whenever one and the same person is permitted—

(*a*) to draw toddy and sell it in its unfermented state, or

(*b*) to draw toddy and export it in its unfermented state, or

(*c*) to import unfermented toddy and sell it in its unfermented state, or

(*d*) to draw or to import fermented or unfermented toddy and use it in the manufacture of other liquor, or

(*e*) to manufacture, or to import and sell, or

(*f*) to manufacture and export,

any country-liquor other than unfermented toddy,

such duty may be levied in consideration of the joint privileges granted, as the Collector, acting under the general or special orders of Government, thinks fit.

Duty on intoxicating drugs.

**27.** Whenever a license is granted under this Act for the manufacture or sale of any intoxicating drug, and whenever the import, export, transport or removal from place to place of any intoxicating drug is permitted under

this Act, such duty shall be levied in consideration of the privilege granted, as the Collector, acting under the general or special orders of Government, thinks fit.

Duties may be farmed.

**28.** All or any of the duties leviable under this Act in any local area may, with the sanction of Government, be farmed, subject to such payment and on such other conditions as Government shall prescribe.

Farmer may apply to Collector to recover amounts due to him.

**29.** When any amount is due to any such farmer from such farmer's licensee in respect of a license, or to any farmer of the right of drawing toddy from any person who has drawn toddy from any toddy-producing tree, such farmer may apply to the Collector to recover such amount on his behalf; and the Collector may, in his discretion, recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by the Collector for the recovery of such amount shall be stayed if the person from whom it is sought to recover the same institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of the Collector for the payment of the amount which the Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done thereunder shall affect the right of any such farmer to recover by suit in the Civil Court or otherwise any amount due to him from any such person as aforesaid.

## VII.—Licenses, etc.

Form and conditions of licenses, etc.

**30.** Every license, permit or pass granted under this Act shall be granted—

(*a*) on payment of such fees, if any,

(*b*) for such period,

(*c*) subject to such restrictions and on such conditions, and

(*d*) shall be in such form and contain such particulars,

as Government directs in rules or orders made either generally, or in any particular instance, in this behalf, such rules or orders being not inconsistent with this Act:

[a] Provided that no fee shall be charged on account of any license, permit or pass in respect of mhowra flowers granted under section 18A.

Counterpart agreement to be executed by licensees.

**31.** Every person taking out a license for the manufacture or sale of any liquor or intoxicating drug under this Act shall execute a counterpart agreement in conformity with the tenor of his license, and shall give such security for the performance of his agreement as the Collector may require.

[a] This proviso was added by Bom. Act III of 1892, s. 2A.

Power to recall licenses, etc.

**32.** The Collector may summarily recall or cancel any license, permit or pass granted under this Act—

(*a*) if any fee or duty payable by the holder thereof be not duly paid, or

(*b*) in the event of any breach by the holder of such license, permit or pass, or by his servants, or by any one acting with his express or implied permission, on his behalf, of any of the terms or conditions of such license, permit or pass, or

(*c*) if the holder thereof is convicted of any offence against this Act or any other law for the time being in force relating to ábkári-revenue, or of any criminal offence.

## VIII.—General Provisions.

Certain licensees required to keep measures, etc.

**33.** Every person who manufactures or sells liquor under a license granted under this Act shall be bound—

(*a*) to supply himself with such measures and with such instruments for testing the strength or quality of liquor as the Collector prescribes, and to keep the same in good condition, and

(*b*) on the requisition of any Ábkári-officer duly empowered in this behalf at any time to measure out or test the strength or quality of any liquor in his possession in such manner as the said Ábkári-officer may require.

Recovery of duties, etc.

**34.** All duties, taxes, fines and fees leviable under any of the foregoing provisions of this Act or of any license, permit, or pass issued under it, and all amounts due from any farmer under this Act, may be recovered from the person primarily liable to pay the same, or from his surety (if any) as if they were arrears of land-revenue.

## IX.—Powers of Ábkári-officers.

Power to Commissioners to frame rules.

**35.** The Commissioners may from time to time frame rules—

(*a*) regulating the mode in which toddy may be supplied to licensed vendors of the same, or to persons who use it in the manufacture of other liquor;

(*b*) determining the number of licenses of each description to be granted in any district or place;

(*c*) regulating the number, size and description of stills to be used in any distillery;

(*d*) providing for the inspection and supervision of stills, distilleries and breweries;

(*e*) for the management of any public distillery established under section 15;

(*f*) for placing the preparation of intoxicating drugs, and the storage, import, export, transport or removal of liquor or intoxicating drugs under such supervision as may be deemed necessary for the purposes of this Act;

(*g*) prescribing the occasions on which special orders may be granted under section 17 for the retail sale of larger quantities of country liquor or intoxicating drugs than are prescribed in any notification issued under the said section, and the conditions on which such sales may be made;

(*h*) prohibiting the use of any article which they shall deem to be noxious or otherwise objectionable in the manufacture of liquor or of any intoxicating drug.

Powers exerciseable by Ábkárí-officers on information that liquor, etc., is unlawfully manufactured, etc.

**36.** Any Commissioner or Collector, or other Ábkárí-officer duly empowered in this behalf, may—

(*a*) enter and inspect, at any time by day or by night, any shop or premises in which any licensed manufacturer or vendor carries on the manufacture or sale of any liquor or intoxicating drug, or draws toddy, or stores any such liquor or drug, and examine, test, measure or weigh any such person's stock of liquor, drugs or materials; or

(*b*) enter, at any time by day or by night, any building, vessel or enclosed place in which he has reason to believe that liquor or any intoxicating drug liable to confiscation under this Act is manufactured, kept or concealed, or that toddy is drawn, or that any still, utensil, implement or apparatus is used, kept or concealed for the purpose of manufacturing liquor or any intoxicating drug contrary to the provisions of this Act; and

(*c*) in case of resistance, break open any door and remove any other obstacle to his entry into any such shop, premises, building, vessel, or other place; and

(*d*) seize any liquor or drug and any material used in the manufacture thereof, and any still, utensil, implement or apparatus, and any other thing which he has reason to believe to be liable to confiscation under this Act, or under any other law for the time being in force relating to ábkárí-revenue; and

(*e*) detain and search and, if he think proper, arrest any person whom he has reason to believe to be guilty of any offence under this or any other law for the time being in force relating to ábkárí-revenue.

Power to seize liquor, etc., in open places, and to detain, search and arrest.

**37.** Any Commissioner or Collector, or other Ábkárí-officer duly empowered in this behalf, may—

(*a*) seize in any open place, or in transit, any liquor or intoxicating drug or any other thing which he has reason to believe to be liable to confiscation under this or any other law for the time being in force relating to ábkárí-revenue;

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has any such liquor, drug or other thing in his possession, arrest him.

Searches how made.

**38.** All searches under the two last preceding sections shall be made in accordance with the provisions of the Code of Criminal Procedure, 1882 [a]. X of 1882.

Officers of certain departments bound to assist.

**39.** All officers of the departments of Police, Customs, Salt, Opium or Revenue, or of the Bombay Port-trust, shall be legally bound to assist any Ábkárí-officer in carrying out the provisions of this Act.

Issue of warrants.

**40.** Any Commissioner, or Collector, or other Ábkárí-officer duly empowered in this behalf, or a Magistrate, may issue a warrant—

(*a*) for the arrest of any person whom he has reason to believe to have committed an offence against this or any other law relating to ábkárí-revenue for the time being in force, or

(*b*) for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe that any liquor or intoxicating drug is manufactured or sold, or that any toddy is drawn contrary to the provisions of this Act, or that any liquor, intoxicating drug or other thing liable to confiscation under this or any other law for the time being in force relating to ábkárí-revenue is kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1882 [a], by a Police-officer or by an Ábkárí-officer duly empowered in this behalf, or, if the officer issuing the warrant deems fit, by any other person. X of 1882.

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[a] The reference to Act X of 1872 is altered in accordance with Act X of 1882, s. 3. (For Act X of 1882 see the revised edition, as modified up to 15th December, 1888, published by the Legislative Department.)

Disposal of person arrested or thing seized.

**41.** Every person arrested and thing seized under section 36, 37 or 40 shall be forwarded without delay to the officer in charge of the nearest Police-station, who shall inquire into and deal with the case as one of an offence for which the Police may arrest without a warrant.

Closing of shop for sake of public peace.

**42.** It shall be lawful for the Collector by notice in writing to the licensee to require that any shop in which liquor or any intoxicating drug is sold by retail shall be closed at such times as he may deem it necessary for the sake of public peace and order that such shop should remain closed.

In the event of the occurrence of a riot or unlawful assembly in the vicinity of any such shop, it shall be lawful for any Magistrate or Police-officer who is present to require such shop to be kept closed for such period as he deems fit.

## X.—Penalties.

For illegal import, etc.

**43** [a] (1). Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any license, permit or pass obtained under this Act,—

(*a*) imports or exports liquor or any intoxicating drug into or out of any part of the Presidency of Bombay, or

(*b*) transports or removes liquor or any intoxicating drug from one place to another, or

(*c*) manufactures liquor or any intoxicating drug, or

(*d*) draws toddy from any tree, or

(*e*) constructs or works any distillery or brewery, or

(*f*) uses, keeps or has in his possession any material, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing liquor or any intoxicating drug, or

(*g*) sells liquor or any intoxicating drug,

shall be punished for each such offence with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

[b] (2). Whoever, in contravention of this Act or of any rule or order made under this Act or of any license, permit or pass granted under this Act, imports, exports, collects, transports, sells or has in his possession mhowra flowers shall be punished for each such offence with fine which may extend to five hundred rupees or with imprisonment which may extend to three months or with both: Provided that no person shall be punished in respect of any mhowra flowers which are either growing on a tree or are lying uncollected on the ground as they have fallen from a tree.

[a] By Bom. Act III of 1892, s. 3, it was directed that the original s. 43 be numbered and cited as sub-section (1) of section 43.

[b] This sub-section was added by Bom. Act III of 1892, s. 3.

For neglect to keep measures, etc.

**44.** Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any license, permit or pass obtained under this Act,—

(*a*) neglects to supply himself with measures for measuring liquor or with instruments for testing the strength of liquor, or to keep the same in good condition, or

(*b*) refuses to measure or test the strength or quality of any liquor in his possession,

shall be punished for each such offence with fine which may extend to two hundred rupees.

For misconduct by licensee, etc.

**45.** Whoever, being the holder of a license, permit or pass granted under this Act,—

(*a*) fails to produce such license, permit or pass on the demand of any Akbári-officer duly empowered to make such demand, or of any officer of the departments named in section 39 superior in rank to a peon or constable, or

(*b*) wilfully does, or omits to do, anything in contravention of any rules or orders made under this Act, or

(*c*) commits any act in breach of any of the conditions of his license not otherwise provided for in this Act, or

(*d*) wilfully contravenes any rule prescribed by a Commissioner for the management of a public distillery established under section 15 [*], or

(*e*) commits any act in breach of the conditions on which he is permitted to manufacture liquor in any such public distillery, or

(*f*) permits drunkenness, riot or gaming in any shop or place in which such liquor or drug is sold or manufactured, or

(*g*) permits persons of notoriously bad character to meet or remain in any such shop or place,

shall be punished for each such offence with fine which may extend to one hundred rupees.

For misconduct by licensed vendor or manufacturer.

**46.** Whoever, being the holder of a license for the sale or manufacture of liquor or of any intoxicating drug under this Act,—

(*a*) mixes or permits to be mixed with the liquor or intoxicating drug sold or manufactured by him any noxious drug or any foreign ingredient likely to add to its actual or apparent intoxicating quality or

[*] Words repealed by Bom. Act III of 1886 are omitted.

strength, or any article prohibited by any rule made under section 35, clause (*h*), when such admixture shall not amount to the offence of adulteration under section 272 of the Indian Penal Code [a], or

XLV of 1860.

(*b*) sells or keeps, or exposes for sale, as European or foreign liquor, liquor which he knows or has reason to believe to be country-liquor, or

(*c*) marks the cork of any bottle, or any bottle, case, package or other receptacle, containing country-liquor, or uses any bottle, case, package or other receptacle containing country-liquor, with any mark thereon or on the cork thereof with the intention of causing it to be believed that such bottle, case, package or other receptacle contains European or foreign liquor, when such act shall not amount to the offence of using a false trade-mark with intent to deceive or injure any person under section 482 of the Indian Penal Code [a], or

(*d*) sells or keeps, or exposes for sale, any country-liquor in a bottle, case, package or other receptacle with any mark thereon or on the cork thereof with the intention of causing it to be believed that such bottle, case, package or other receptacle contains European or foreign liquor, when such act shall not amount to the offence of selling goods marked with a counterfeit trade-mark under section 486 of the Indian Penal Code [a],

shall be punished for each such offence with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

For illegal possession of liquor, etc.

**47.** Whoever, except under the authority of some license, permit, pass or special order obtained under this Act, has in his possession within any local area or place to which the provision of section 17 has been applied, any larger quantity of country-liquor or of any intoxicating drug than may legally be sold by retail under the provision of the said section, shall be punished with fine which may extend to two hundred rupees.

For maliciously giving false information.

**48.** Whoever maliciously gives false information that any person has committed, or been concerned in, any offence against this Act, with the intent that such person be arrested, or that any building, vessel or other place be searched to the injury or annoyance of such person or of any other person, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

[a] For Act XLV of 1860 see the revised edition, as modified up to 1st August, 1890, published by the Legislative Department.

For vexatious search or arrest.

**49.** Any Ábkárí or other officer who, without reasonable ground of suspicion, enters or searches, or causes to be searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine which may extend to five hundred rupees.

For vexatious delay.

**50.** Any Ábkárí or other officer or person who vexatiously and unnecessarily delays forwarding to the officer in charge of the nearest Police-station, as required by section 41 [a], any person arrested, or any illicit articles seized under this Act, shall be punished with fine which may extend to two hundred rupees.

For conniving at escape of persons arrested, etc.

**51.** Any Ábkárí or other officer who unlawfully releases or connives at the escape of any person arrested under this Act, or connives at the commission of any offence against this Act, or

acts in any manner inconsistent with his duty for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken, or the ábkárí-revenue defrauded,

and any officer of any other department named in section 39 invested with local jurisdiction who connives at the commission of any offence against this Act in any place within his jurisdiction,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

For neglecting to assist an Ábkárí-officer.

**52.** Any officer of any of the departments named in section 39 who, without lawful excuse, neglects or refuses to assist any Ábkárí-officer in carrying out the provisions of this Act, shall be punished with fine which may extend to five hundred rupees.

Presumption as to commission of offence in certain cases.

**53.** In prosecutions under section 43 or section 47, it shall be presumed until the contrary is proved, that the accused person has committed an offence under those sections in respect of any liquor or intoxicating drug, or any still, utensil, implement or apparatus whatsoever for the manufacture of liquor or intoxicating drugs, [b] or mhowra flowers [b], or any such

[a] Words repealed by Bom. Act III of 1886 are omitted.
[b-b] These words were inserted by Bom. Act III of 1892, s. 4.

materials as are ordinarily used in the manufacture of liquor or of any intoxicating drug, for the possession of which he is unable to account satisfactorily;

and the holder of a license, permit or pass under this Act shall be responsible, as well as the actual offender, for any offence committed by any person in his employ or acting on his behalf under section 43, 44, 45 or 46 as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

Things liable to confiscation.

**54.** All liquor, [a] mhowra flowers [a] or intoxicating drugs imported, exported, transported, removed, manufactured, sold or had in possession in contravention of this Act or of any rule or order made under this Act, or of any license, permit or pass obtained under this Act, and

all toddy drawn from any tree in contravention of this Act, or of any such rule, order, license, permit or pass as aforesaid; and

all liquor, if any, [b] all mhowra flowers, if any [b], and all intoxicating drugs, if any, lawfully imported, exported, transported, removed, manufactured, sold or had in possession, and all toddy, if any, lawfully drawn, along with, or in addition to, any liquor [c] mhowra flowers [c] or intoxicating drugs, imported, exported, transported, removed, manufactured, sold or had in possession, or along with, or in addition to, any toddy drawn as aforesaid; and

all stills, utensils, implements or apparatus whatsoever for the manufacture of liquor or of any intoxicating drug, used, kept or had in possession in contravention of this Act, or of any rule or order made under this Act, or of any license obtained under this Act; and

all materials collected or had in possession for the purpose of unlawfully manufacturing liquor or any intoxicating drug, and

the vessels, packages and coverings in which any liquor, [d] mhowra flowers [d], intoxicating drug, still, utensil, implement, apparatus or material aforesaid, is found, and the other contents, if any, of the vessel or package in which the same is found, and the animals, carts, vessels or other conveyances used in carrying the same,

shall be liable to confiscation.

Order of confiscation by whom to be made.

**55.** All confiscations under this Act shall be adjudged by the Collector:

[a-a, c-c, d-d] These words were inserted by Bom. Act III of 1892, s. 5 (*1*).

[b-b] These words were inserted by Bom. Act III of 1892, s. 5 (*2*).

Provided that no order of confiscation shall be made until the expiration of one month from the date of seizing the things intended to be confiscated, or without hearing any person who claims a right thereto, and the evidence, if any, which he produces in support of his claim.

Redemption may be allowed.

Whenever confiscation is ordered under this Act, the owner of the thing ordered to be confiscated may, at the discretion of the Collector, be given an option of redeeming it on payment of such fine as the Collector thinks fit.

## XI.—Procedure.

Cognizance of offences.

**56.** All offences against this Act shall be cognizable by a Magistrate.

**57.** [*Applicability of certain portions of Indian Penal Code.*] *Repealed by Bom. Act III of 1886.*

Disposal of things confiscated.

**58.** All things confiscated under this Act shall be disposed of in such manner as the Commissioners from time to time direct in rules or orders made either generally or in any particular instance in this behalf.

Payment of rewards.

**59.** Government may from time to time make rules for regulating the payment of rewards to officers and informers out of the proceeds of fines and confiscations under this Act.

Appeals.

**60.** All orders passed by any Abkári-officer other than the Collector or Commissioner under this Act shall be appealable to the Collector at any time within sixty days from the date of the order complained of.

All orders passed by a Collector or Commissioner shall be appealable to the Commissioner or to Government, respectively, at any time within ninety days from the date of the order complained of:

Provided that no appeal shall lie against an order passed by a Commissioner on appeal.

Subject to the foregoing provisions, the rules for the time being in force relating to appeals in the Revenue Department shall apply to appeals under this Act.

## XII.—Miscellaneous.

Saving of certain Acts.

**61.** Nothing in this Act affects the Cantonments Act, 1889 [a], or Act XVI of 1863 [b] (*An Act to make special provision for the levy of the excise-duty payable on spirits used exclusively in arts and manufactures or in chemistry*),

[a] The reference to Act XVIII of 1853 and Bom. Act III of 1867 is altered in accordance with Act XIII of 1889, s. 2.

[b] Printed, General Acts, 1834-66, Ed. 1887, p. 382.

or any enactment passed by the Governor General in Council since the 16th November, 1861, the date on which the Indian Councils Act [a] came into force.

24 & 25 Vict., c. 67.

Exception of medicated articles.

**62.** Nothing in the foregoing provisions of this Act applies to the manufacture, sale or supply of any *bonâ fide* medicated article for medicinal purposes by medical practitioners, chemists, druggists, apothecaries or keepers of dispensaries; but it shall be lawful for Government at any time, by notification in the Bombay Government Gazette, to prohibit the sale of any such article within any defined local area or place except under a license from the Collector, which shall be granted on payment of such fees and subject to such conditions as Government may deem fit to prescribe.

Annual payment to Bombay Municipal Corporation in lieu of money received under Bombay Act IX of 1867.

**63.** Whereas it was provided by section 14 of Bombay Act IX of 1867 [b] that all money realized, collected or obtained by the issue of licenses, or by forfeitures or by imposition or infliction of fines and penalties under the said Act should be carried to the credit of the municipal fund of the City of Bombay for municipal purposes, it is hereby enacted that, in lieu of the money hitherto so received by the Municipal Corporation of the City of Bombay, a fixed sum of Rs. 1,43,750 shall, from and after the first day of August, 1878, be annually paid by Government to the said Corporation for the said purposes.

**64-66.** [*Certain rights to cease*]. *Repealed by Act XVI of 1895.*

Bar of action.

**67.** No action shall lie against Government or against any Ábkárí-officer for damages in any Civil Court for any act *bonâ fide* done or ordered to be done by them in pursuance of this Act, or of any law at the time in force relating to ábkárí-revenue;

and all prosecutions of any Ábkárí-officer, and all actions which may be lawfully brought against Government or against any Ábkárí-officer, in respect of anything done, or alleged to have been done, in pursuance of this Act, shall be instituted within four months from the date of the act complained of, and not afterwards;

and any such action shall be dismissed—

(*a*) if the plaintiff does not prove that, previously to bringing such action, he has presented all such appeals allowed by this Act, or by any other law for the time being in force, as within the aforesaid period of four months it was possible to present; or,

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[a] Printed in the Collection of Statutes relating to India, Vol. II, Ed. 1881, p. 695.
[b] Bom. Act IX of 1867 is repealed by s. 2. of this Act.

(*b*) in the case of an action for damages, if tender of sufficient amends shall have been made before the action was brought, or if after the institution of the action a sufficient sum of money is paid into Court with costs, by or on behalf of the defendant:

Provided that nothing in this section shall be deemed to affect the powers or jurisdiction of Her Majesty's High Court of Judicature or of the Court of Small Causes at Bombay.

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SCHEDULE.

[*Enactments repealed.*]

*Repealed by Act XVI of 1895.*

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BOMBAY ACT No. II OF 1879.

(*The assent of the Governor General of India to this Act was first published by the Governor of Bombay on the 5th April, 1879.*)

## An Act to further amend Act XIII of 1856.

[NOTE.—The amendments made by this Act was incorporated in Act XIII of 1856 and Bom. Act I of 1872, respectively, as printed on pp. 74 *et seq.* of Vol. 1 of this Code and pp. 135 *et seq. supra.*]

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# THE KARÁCHI VACCINATION ACT, 1879.

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